

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)
Plaintiff,)
) Civil Action # 05-10192-RWZ
v.)
ONE STAR CLASS SLOOP SAILBOAT)
BUILT IN 1930 WITH HULL NUMBER)
721, NAMED "FLASH II,")
)
Defendant.)

**GOVERNMENT'S OPPOSITION TO MOTION TO CONTINUE DISCOVERY AND
GOVERNMENT'S MOTION FOR PROTECTIVE ORDER**

The government respectfully opposes the motion of Claimant Kerry Scott Lane ("Lane") to extend discovery and moves for a protective order pursuant to Federal Rule of Civil Procedure 26(c) that the deposition of Arlan Ettinger noticed by Lane for May 22, 2007 not be had.

On May 15, 2007, the Court held a status conference in this case granting the government's motion for partial summary judgment regarding the value of the *in rem* defendant (the "Flash II"). The Court then ruled that it could not decide the issue of forfeitability of the Flash II without an evidentiary hearing. With the agreement of the parties, the Court scheduled a trial on the issue of forfeitability on May 24, 2007. A previous order of the Court had set May 24, 2007 as the discovery deadline.

Lane's counsel now seeks an extension of discovery to depose Arlan Ettinger and Robert Harper regarding the value of the Flash

II, an issue was resolved on May 15, 2007.¹ Lane has also noticed Ettinger's deposition for May 22, 2007, two days before the trial in this case.

The government objects to these depositions because they do not relate to the matter at issue in the trial. The parties had specifically jointly requested that the Court resolve the issue of value in advance of the discovery cutoff in order to avoid discovery that may be mooted by the Court's ruling. See Docket Entry 57, Joint Motion ("The parties agree that certain depositions may be avoided depending on the Court's resolution of motions. Because of the expense associated with these depositions, as well as the inconvenience to non-parties, the parties wish to avoid these items if the May 3, 2007 hearing will make them immaterial.")

Lane seeks to depose these individuals for matters that are not related to the issues remaining in the instant proceeding regarding forfeitability.² The government respectfully submits

¹The Court indicated that the valuation issue may be revisited if government failed to meet its burden of establishing forfeitability of the Flash II. For the purposes of the currently scheduled proceeding, however, the valuation issue has been determined.

²Without addressing each of the *ad hominem* remarks in Claimant's filing, the government notes that the undersigned counsel was off-site interviewing witnesses in an unrelated case on the afternoon of May 16, 2007, and had advised claimant's counsel in advance by email that the undersigned would be unavailable at that time. See Docket 65-2, attachment to Claimant's motion. Counsel's assertion that this was somehow an

that such matters are not appropriate less than a week before trial, and that it is not appropriate to extend discovery for the purpose of matters that are not currently at issue.

For these reasons, the government respectfully opposes the Claimant's motion to extend discovery and moves for an order that the deposition noticed for Tuesday May 22, 2007 not be had.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/ Nancy Rue
Nancy Rue
Assistant U.S. Attorney
U.S. Attorney's Office
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attempt by the undersigned to defeat her attempts to reschedule are false. Moreover, the government had previously suggested that Ettinger's deposition be cancelled as a result of the ruling at the hearing. See Exhibit 1, attached hereto. Claimant refused to cancel, see id., asserting that it was "too much trouble to set up." The government did not press the issue because the deposition had already been scheduled, travel arrangements had already been made, and the witness had already agreed to the date. However, given that the witness became unavailable and the scheduled date was cancelled, the government submits that rescheduling on a topic not currently at issue is simply inappropriate.

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Nancy Rue
Nancy Rue
Assistant United States Attorney

Date: May 18, 2007

Rue, Nancy (USAMA)

From: Brenda Grantland [bgrantland1@comcast.net]
Sent: Tuesday, May 15, 2007 4:44 PM
To: Rue, Nancy (USAMA); Brenda Grantland
Subject: Re: supplemental discovery

No, I'm not cancelling the depo - it was too much trouble to set up.
And if we win, there will still be a factual issue of what the fair market value is.

Brenda

Rue, Nancy (USAMA) wrote:

>Are you cancelling the depo of Ettinger in light of the court's
>decision?
>
>I'll fax you the CW's affidavit.
>
>-----Original Message-----
>From: Brenda Grantland [mailto:bgrantland1@comcast.net]
>Sent: Tuesday, May 15, 2007 4:29 PM
>To: Rue, Nancy (USAMA); Brenda Grantland
>Subject: supplemental discovery
>
>Nancy -
>
>Be sure to supplement your discovery responses with any documents the
>CW
>
>gives you to corroborate his claimed interest in the sailboat. I
>didn't
>
>see any documents in your previous response to our Documents Request
>which appear to come from the CW except exhibit N-169, which Ole
>Anderson allegedly gave the CW on September 27, 2004.
>
>I need the supplemental responses to discovery as soon as you get them
>-- but by Monday at the latest, because I'll be traveling on Wednesday,
>and I'll need to make copies of any exhibits I want to use on Tuesday.
>
>Brenda
>
>
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